

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6904 of 1999

to

FIRST APPEAL No 6910 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

ATAJI CHUNTHAJI

Appearance:

MR S.J.DAVE, AGP for Appellants

MR MD VAKIL for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 03/05/2000

ORAL COMMON JUDGEMENT (PER : M.H.KADRI, J)

1. Appellants filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated 9th September, 1998 passed by the learned Assistant Judge, Mehsana in Land Reference Case Nos. 1912/91 to 1918/91. As common questions of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. Executive Engineer, Narmada Project, Main Canal Construction Division, Ahmedabad, sent a proposal to State Government to acquire agricultural lands of village Ganpatpura, Ta; Kalol, District : Mehsana for the public purpose of Narmada Project. The said proposal was scrutinized by the Government and notification to acquire lands of the claimants-respondents came to be issued under Section 4(1) of the Act, which came to be published in the Government Gazette on 5th November, 1986. The land owners filed their objection under Section 5A of the Act against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Ganpatpura which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose as aforesaid. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on 11th December, 1986. After following usual procedure under the Act, notices under sec.9 of the Act were issued to the respondents claimants. Respondents claimed compensation at the rate of Rs.50/- per sq.mt. for their acquired lands situated in village Ganpatpura, but having regard to the materials placed before him, the Land Acquisition Officer made his award on 29th October, 1989 and offered compensation of the acquired lands belongings to the respondents-claimants at the rate of Rs.1.50 per sq.mt. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Mehsana which were numbered as Land Reference Cases Nos. 1912/91 to 1918/91. All the land reference cases came to be

consolidated and the parties led common evidence in Land Reference Case No. 1912/91.

3. Before the Reference Court also, the claimants claimed compensation at the rate of Rs.50/ per sq.mt. by, inter alia, contending that acquired lands were situated in highly developed area and adjoining to the lands under acquisition, industries of IFFCO and its township were situated at a distance of about 3 km and that acquired lands had potentiality. It was further contended that in the village Ganapatpura, there were facilities of educational institutions, hospitals, telephones, electricity, water-works etc. According to the claimants, acquired lands were highly fertile and claimants were raising crops of Millet, Wheat, Juvar, Cotton, Mustard Seeds, Cotton Seeds etc and were getting yearly net income of Rs. 25,000/ per Vigha. Respondents, therefore, claimed compensation of the acquired lands at the rate of Rs. 50/ per sq.mt.

4. Application was contested by the appellants by filing common reply, inter alia, contending that the compensation offered by the Land Acq. Officer was just, fair and adequate compensation. It was further averred that while fixing the market price of the acquired lands, Land Acq. Officer has taken into consideration potentiality, fertility and situation of the acquired lands and had offered just and adequate compensation to the respondents. Therefore, application for enhanced compensation be dismissed. As stated earlier, all the Reference Cases were consolidated and common evidence was led in Land Ref.Case No. 1912/91. On rival assertions of the parties, Reference Court raised common issues.

5. To substantiate their claim of enhanced compensation of acquired lands, the claimants examined Ataji Chunthaji Thakor at exh.14. The witness produced 7/12 extracts of the acquired lands at exh.15 to 21 which indicated that the claimants were raising crops of millet, wheat, juvar, cotton-seeds, mustard-seeds on the acquired lands. During the deposition of the witness Ataji exh.14, previous award rendered in Land Ref. Case No.1131/89 was produced at exh.27. Previous award exh.27 was in respect of the acquired lands very same village Ganpatpura. Lands of previous award exh.27 were also acquired vide notification issued under sec.4(1) of the Act on 5th November, 1986. Reference Court had determined market price of the acquired lands of the previous award exh.27 of village Ganpatpura at the rate of Rs. 40/ per sq.mt. Relying on the previous award exh.27, Reference Court had determined market price of

the acquired lands of village Ganpatpura as on 5th November, 1986, at the rate of Rs.40/- per sq.mt. which is challenged in this appeal by the appellants.

6. Learned counsel for the appellant Mr. K.G.Sheth has taken us through entire Record & Proceedings of the Reference Court and has submitted that Reference Court has erred in relying on previous award exh.27 which was not relevant and comparable for determination of market value of the present acquired lands. Counsel for the appellants further submitted that respondents, in support of their claim of enhanced compensation for the acquired lands, has not led sufficient evidence and, therefore, Reference Court ought not to have enhanced compensation. Counsel for the appellants had submitted that compensation offered to the claimants for their acquired lands situated at village Ganpatpura was excessive and, therefore, appeals be entertained and allowed. We have also heard learned counsel Mr.M.D.Vakil appearing on caveat for the respondents-claimants.

7. Submissions of learned counsel for the appellants do not deserve any merits. Claimant's witness Ataji described fertility of the present acquired lands as compared to acquired lands of previous award exh.27. Both the acquired lands were situated in the same village Ganpatpura and purpose of acquisition was the same and notifications for acquiring both the lands were same. and public purpose for which both the lands were acquired was same and both the lands were acquired under same notification.

8. It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from same or adjoining village. It is also settled legal principle that one of the method for determination of market value of the acquired lands is the market value determined in previous award with respect to similarly situated lands wherein dates of notification are in near proximity in time. As stated earlier, lands of previous award exh.27 were also acquired by the notification under sec.4(1) of the Act which was issued on 5th November, 1986. The present acquired lands and the acquired lands of previous award were having same fertility and advantages. In our opinion, therefore, previous award exh.27 was most comparable and relevant for determination of the market value of the present acquired lands. Learned counsel Mr.

Vakil has contended that previous award exh.27 rendered in Land Ref. Case Nos. 1131/99 and allied matters was challenged in this High Court in First Appeal Nos. 1322/91 to 1332/99 wherein the Court (Coram: R.Balia & Miss R.M.Doshit, JJ) had confirmed determination of the market value of the acquired lands of village Ganpatpura as on 5th November, 1986 at the rate of Rs.40/ per sq.mt. Hence, previous award exh.27 had become final. Therefore, in our opinion, Reference Court had committed no error in placing reliance on previous award exh.27 which had become final, for the determination market value of the present acquired lands of village Ganpatpura. Determination of market value of the lands of village Ganpatpura as on 5th November, 1986 cannot be said to be excessive, unreasonable or on a higher side. On the contrary, Reference Court had awarded just and adequate compensation to the claimants for their acquired lands. These are the only contentions raised by the counsel for the appellants and we do not find any substance in it. Market value determined by the Reference Court at the rate of Rs.40/ per sq.mt. as on 5th November, 1986, is hereby confirmed. Benefits extended in favour of the respondents claimants under sec.23(1-A), 23(2) and interest under sec.28 of the Act are eminently just and proper and are hereby confirmed. It is clarified that the respondents claimants shall not be entitled to solatium on the amount under sec. 23(1-A) sec. 23(1-A) of the Act and interest on the amount of solatium as per settled legal position laid down in JT 1995(2) SC P.583.

10. For the foregoing reasons, all the appeals fail and are summarily dismissed with no order as to costs.

3.5.2000 [M.H.KADRI, J]

[C.K. BUCH, J]

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